

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOSEPH LLOYD VONALLMAN,
#29222-280

Movant,

v.

UNITED STATES OF AMERICA,
Respondent.

§§§§§
SA-23-CV-1450-JKP
SA-20-CR-454-JKP-4

ORDER

Before the Court is Movant Joseph Lloyd Vonallman's Motion pursuant to 28 U.S.C. § 2255 ("§ 2255 Motion") to vacate, set aside, or correct sentence (ECF No. 579); the Government's Response in opposition thereto (ECF No. 611); and the Report and Recommendation of United States Magistrate Judge Richard B. Farrer. (ECF No. 689). For the following reasons, the Report and Recommendation is accepted and adopted, and the § 2255 Motion is **DISMISSED WITHOUT PREJUDICE**.

In his § 2255 Motion, Vonallman alleges, among other things, that his plea counsel, Alex Scharff, rendered ineffective assistance by failing to file a notice of appeal. Upon review of the pleadings, the Court referred the § 2255 Motion to Judge Farrer, pursuant to the authority vested in the United States Magistrate Judges by 28 U.S.C. § 636 and Appendix C of the Local Rules for the Assignment of Duties to the United States Magistrates, for the purpose of holding an evidentiary hearing and submitting a report and recommendation. (ECF No. 621).

Judge Farrer held an evidentiary hearing on the § 2255 Motion, at which counsel for both parties appeared. (ECF No. 686). Mr. Scharff and Vonallman both testified, along with three of

Vonallman's sisters. Following the hearing, Judge Farrer issued a Report and Recommendation concluding that Mr. Scharff rendered ineffective assistance of counsel for failing to adequately consult with Vonallman about an appeal. (ECF No. 689). Accordingly, Judge Farrer recommends that this Court dismiss the § 2255 Motion without prejudice and grant Vonallman an out-of-time appeal. Judge Farrer further recommends that this Court appoint attorney Angela J. Moore to represent Vonallman on direct appeal.

Pursuant to 28 U.S.C. § 636(b), a party may serve and file specific, written objections to the proposed findings and recommendations of the Magistrate Judge within fourteen days after being served with a copy of the Report and Recommendation and secure a de novo review by the district court. A party's failure to timely file written objections to the proposed findings, conclusions, and recommendations in a report and recommendation bars that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc).

All parties were notified of the Report and Recommendation and informed of the consequences of a failure to file objections. To date, no party has filed objections to the findings of fact and conclusions of law in the Report and Recommendation. The Court, having reviewed the record and finding no plain error, accepts and adopts the Report and Recommendation of the Magistrate Judge.

Accordingly,

IT IS ORDERED that the Report and Recommendation of the United States Magistrate Judge (ECF No. 689) is **ACCEPTED AND ADOPTED**, and Movant Joseph Lloyd Vonallman's

Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255 (ECF No. 579) is **DISMISSED WITHOUT PREJUDICE.**

IT IS FURTHER ORDERED that Vonallman is **GRANTED AN OUT-OF-TIME APPEAL.**

IT IS FURTHER ORDERED that attorney Angela J. Moore is appointed to represent Vonallman on appeal.

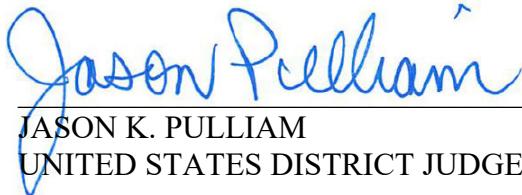
IT IS FURTHER ORDERED that the Clerk of Court re-enter the criminal judgment on the docket, thereby restarting the time for appeal under Federal Rule of Appellate Procedure 4(b)(1)(A). *See United States v. Gaytan-Ortiz*, 308 F. App'x 798, 800 (5th Cir. 2009) (citations omitted).

IT IS FURTHER ORDERED that all pending motions related to Vonallman's § 2255 Motion, if any, are **DENIED AS MOOT**, and this case is now **CLOSED**.

IT IS FINALLY ORDERED that, to the extent necessary, a certificate of appealability is **DENIED**.

It is so **ORDERED**.

SIGNED on this 16th day of December, 2024.



JASON K. PULLIAM
UNITED STATES DISTRICT JUDGE